

September 26, 2019

The Honorable Chris Van Hollen  
United States Senate  
110 Hart Senate Office Building  
Washington, D.C. 20002

The Honorable Danny K. Davis  
United States House of Representatives  
2159 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Rob Portman  
United States Senate  
448 Russell Senate Office Building  
Washington, D.C. 20002

The Honorable David Schweikert  
United States House of Representatives  
1526 Longworth House Office Building  
Washington, D.C. 20515

**RE: Letter of Support for the ED ACCESS Act of 2019**

Dear Senators Van Hollen and Portman and Representatives Davis and Schweikert,

We write to express our support for the Eliminating Discrimination and Creating Corridors to Expand Student Success (ED ACCESS) Act of 2019, which would remove the lifetime ban on the American Opportunity Tax Credit for individuals convicted of a drug felony. Since 1998, individuals have been able to claim a portion of qualified tuition, fees, and course materials paid for themselves if eligible, or for an eligible student, in the form of a federal tax credit for the first four years of higher education. However, individuals convicted of a state or federal drug felony have been barred for life from claiming this federal tax credit.

Congress enacted the HOPE Scholarship Tax Credit in 1998, which included the drug felony ban. In 2009, Congress reformed this tax credit and renamed it the American Opportunity Tax Credit (AOTC) but retained the drug felony ban.

More than twenty years ago, when Congress first enacted what would become the AOTC, it was believed that forms of punishment like the drug felony ban would reduce demand and supply for illegal drugs. We now know that imposing these kinds of barriers only jeopardizes those with a prior drug felony's ability to succeed.

For individuals seeking to rebuild their lives following a conviction, education is one of the most valuable tools. Research shows that the more education an individual obtains, the less likely they are to be incarcerated.<sup>1</sup> For the tax code to arbitrarily discriminate against those with a felony drug conviction is nonsensical. It is also inappropriate to address drug policy in the tax code.

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<sup>1</sup> Stephanie Ewert and Tara Wildhagen, U.S. Department of Commerce, Bureau of the Census, Housing and Economic Statistics Division, *Educational Characteristics of Prisoners: Data from the ACS*, (Washington, DC: Government Printing Office, 2011), 3.

The drug felony ban simply amounts to duplicative punishment for individuals who have already paid a debt through prison time, fines, probation, or rehabilitation programs. The ban also disproportionately affects people of color. Although no more likely to use drugs than other students,<sup>2</sup> African Americans are more likely to be convicted of a felony drug law violation<sup>3</sup> that renders one ineligible for the AOTC.

The felony ban also creates confusion that likely deters taxpayers from claiming the AOTC even when eligible. For instance, millions of people across the country are arrested annually for violations of drug laws that vary by state. Possession or distribution of a drug in one state may be a felony while it's a misdemeanor in another state.<sup>4</sup> Removing the felony ban will make the AOTC fairer, simpler and more effective.

Exclusions to AOTC eligibility do not exist for any other class of crimes. The ED ACCESS Act would simply strike the felony drug offense exclusion from the code in 26 U.S.C. 25A(b)(2)(D) to equalize the law. Thankfully, there is precedent for doing so. The exclusion would have been repealed in a larger reform of education tax credits in the Student and Family Tax Simplification Act, which passed the House in 2013 with bipartisan support.

Congress should remove arbitrary barriers like the American Opportunity Tax Credit drug felony ban that could impede the success of individuals who are seeking to improve their lives and equalize the treatment of this form of tax-based federal student aid.

Sincerely,

American Conservative Union  
Americans for Tax Reform  
Campaign for Liberty  
Center for Law and Social Policy (CLASP)  
Center for Worker Freedom  
College & Community Fellowship  
CURE (Citizens United for Rehabilitation of Errants)  
Digital Liberty

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<sup>2</sup> Sean Esteban McCabe, Michele Morales, PhD, James A. Cranford, Jorge Delva, Melnee D. McPherson, and Carol J. Boyd, "Race/ethnicity and gender differences in drug use and abuse among college students" *Journal of Ethnicity in Substance Abuse* 6, no. 2 (2007): 75-95. DOI: 10.1300/J233v06n02\_06.

<sup>3</sup> The Sentencing Project, *Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance: Regarding Racial Disparities in the United States Criminal Justice System*, (Washington, DC: March, 2018), 3, <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

<sup>4</sup> Higher Education Tax Reform: A Shared Agenda for Increasing College Affordability, Access, and Success, The Reimagining Aid Design and Delivery (RADD) Consortium for Higher Education Tax Reform, November 2013, Accessed via the Internet: <https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/2014.06.20-Consortium-for-Higher-Ed-Tax-Reform-FINAL.pdf>

Drug Policy Alliance  
FreedomWorks  
Health in Justice Action Lab, Northeastern University School of Law  
Justice Action Network  
Justice Roundtable  
Legal Action Center  
Operation Restoration  
NAACP  
National Association of Criminal Defense Lawyers  
National Association of Social Workers  
National HIRE Network  
National LGBTQ Task Force Action Fund  
Prison Fellowship  
R Street Institute  
Safer Foundation  
Students for Sensible Drug Policy

CC: Senator Jeff Merkley; Senator Ron Wyden; Senator Susan Collins; Senator James Lankford  
Representative Steven Horsford; Representative Brad Wenstrup; Representative Terri Sewell; Representative Kenny Marchant